

262, 55 Stat. 375, which limited, after Sept. 9, 1940, the contractor's fee for construction and installation of buildings, etc., at military posts, to 6 per centum of the estimated cost, exclusive of the fee, has not been repeated in subsequent years, except as a temporary measure and expired with the appropriation acts of which it was a part.

§ 270. Repealed. Aug. 24, 1935, ch. 642, § 5, 49 Stat. 794

Section, acts Aug. 13, 1894, ch. 280, 28 Stat. 278; Feb. 24, 1905, ch. 778, 33 Stat. 811; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, related to bonds of contractors for buildings or works. See sections 270a to 270d-1 of this title.

The repealing section provided that section should remain in force with respect to contracts for which invitations for bids had been issued on or before sixty days after August 24, 1935, and to persons and bonds in respect of such contracts.

§ 270a. Bonds of contractors of public buildings or works

(a) Type of bonds required

Before any contract for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than \$1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$1,000,000 and not more than \$5,000,000, the said payment bond shall be in a sum of 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$5,000,000 the said payment bond shall be in the sum of \$2,500,000.

(b) Waiver of bonds for contracts performed in foreign countries

The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

(c) Authority to require additional bonds

Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

(d) Coverage for taxes in performance bond

Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under title 26. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

(Aug. 24, 1935, ch. 642, § 1, 49 Stat. 793; Nov. 2, 1966, Pub. L. 89-719, title I, § 105(b), 80 Stat. 1139; Nov. 2, 1978, Pub. L. 95-585, 92 Stat. 2484; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095; Oct. 13, 1994, Pub. L. 103-355, title IV, § 4104(b)(1)(B), 108 Stat. 3342.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-355 struck out "exceeding \$25,000 in amount," after "Before any contract" in introductory provisions.

1986—Subsec. (d). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95-585 substituted "\$25,000" for "\$2,000".

1966—Subsec. (d). Pub. L. 89-719 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-719 applicable to contract entered into pursuant to invitations for bids issued after June 30, 1967, see section 114(c)(2) of Pub. L. 89-719, set out as a note under section 6323 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 5 of act Aug. 24, 1935, provided in part: "That this act [enacting this section and sections 270b to 270d of this title] shall take effect upon the expiration of sixty days after the date of its enactment [Aug. 24, 1935], but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract." [Another section 5 of act Aug. 24, 1935, is classified to section 270d-1 of this title].

SHORT TITLE

Section 6 of act Aug. 24, 1935, as added by Pub. L. 103-355, title X, § 10005(f)(1), Oct. 13, 1994, 108 Stat. 3408, provided that: "This Act [enacting this section, sections 270b to 270d-1 of this title, and provisions set out as a note above] may be cited as the 'Miller Act'."

**ALTERNATIVES TO PAYMENT BONDS PROVIDED BY
FEDERAL ACQUISITION REGULATION**

Section 4104(b)(2) of Pub. L. 103-355 provided that: